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WESTERN DISTRICT OF LOUISIANA
LAFAYETTE, LOUISIANA

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE-OPELOUSAS DIVISION

UNITED STATES OF AMERICA

CRIMINAL NO. 98-60009-01

VERSUS

JUDGE DOHERTY

TRAMELL ARCENEUX

MAGISTRATE JUDGE METHVIN

MEMORANDUM RULING AND ORDER

This Court is in receipt of defendant's "Motion Under 18 U.S.C. §3582(c)(2) for Reduction of Sentence Based on Retroactive Guideline Amendment, Effective November 1, 2007, Concerning Cocaine Base ("Crack")" [Doc. 150]. Defendant seeks the application of Amendment 706 (as amended by Amendment 711), which recently amended the Sentencing Guidelines regarding crack cocaine effective November 1, 2007. U.S.S.G. App. C, Amends. 706, 711. Defendant requests that Amendment 706 be applied retroactively to his sentence imposed on June 17, 1999, which was affirmed by the court of appeals. (Rec. Docs. 97, 110). The United States has filed a response, requesting that the motion be denied as premature or that the case be stayed considering that the *retroactive* effect of the amendment does not take place until March 3, 2008, and on grounds that the government needs additional time to research defendant's eligibility for the application of the amendment to his sentence. [Doc. 151].

This Court notes the sentencing guidelines with respect to crack cocaine were, indeed, revised on November 1, 2007. Although the amendments are to be applied retroactively, the government is correct that the retroactive effect on sentences already imposed does not take effect until March 3, 2008.

This Court has been in contact with the Office of Probation, which is currently in the process

of cataloging the individuals currently incarcerated whose sentences are affected by the new amendments. Specifically, the Office of Probation is currently obtaining necessary information concerning the affected individuals' post-sentencing conduct, as well as the impact of a sentencing modification on the interest of public safety in each individual case, as required pursuant to the policies of the United States Sentencing Commission. Until the Court receives this information, it can make no modification to defendant's sentence. Additionally, no modification may be made prior to March 3, 2008.

Considering the foregoing, and it appearing that the government's position is well-supported,

IT IS ORDERED THAT defendant's "Motion Under 18 U.S.C. §3582(c)(2) for Reduction of Sentence Based on Retroactive Guideline Amendment, Effective November 1, 2007, Concerning Cocaine Base ("Crack")" [Doc. 150] is DENIED WITHOUT PREJUDICE as premature. After March 3, 2008, defendant will be entitled to re-urge his motion. Once the defendant files a timely motion for reduction of sentence, and once this Court has received an amended Presentence Investigation Report that contains the information regarding post-sentencing conduct and the impact on public safety, this Court will take defendant's motion under advisement.

IT IS FURTHER ORDERED THAT the Clerk of Court mail a copy of this Memorandum Ruling and Order to Rebecca Hudsmith, Office of the Federal Public Defender, and that Ms. Hudsmith advise defendant of the information contained herein.

Lafayette, Louisiana, this 7 day of February, 2008.


REBECCA F. DOHERTY
UNITED STATES DISTRICT JUDGE

COPY SENT

DATE 2-8-08

BY 012

TO Fed Pub Def's Office

USPO
USAO